



Federal Communications Commission
Washington, D.C. 20554

March 25, 1996

DOCKET FILE COPY ORIGINAL

In Reply Refer To:
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EX PARTE OR LATE FILED

The Honorable Richard Shelby
United States Senate
110 Hart Senate Office Building
Washington, D.C. 20510-0103

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MAR 28 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Dear Senator Shelby:

Thank you for your letter on behalf of Timothy C. Boyce, a representative of the Alabama Forestry Commission. Mr. Boyce requests that the Commission postpone resolution of its "refarming" rulemaking proceeding (PR Docket No. 92-235), which involves consolidation of the twenty Private Land Mobile Radio (PLMR) services, including the six Public Safety Radio Services. Mr. Boyce believes that such consolidation, if not postponed, would prejudice the efforts of the Public Safety Wireless Advisory Committee (Advisory Committee), a group established by the FCC and the National Telecommunications and Information Administration (NTIA) to provide advice on improving the wireless communications capabilities of public safety entities. Mr. Boyce is particularly concerned that the Forestry-Conservation Service, currently classified as a Public Safety Radio Service, will be consolidated with services outside this group and, thus, users would encounter increased interference problems.

In June 1995, the Commission adopted a *Report and Order and Further Notice of Proposed Rule Making* in PR Docket No. 92-235, which concluded that the PLMR services should be consolidated into two to four service pools in order to achieve greater operational efficiency for users and to promote more flexible use of the spectrum. The Commission viewed consolidation as a unified effort by the PLMR community and emphasized the importance of developing a consolidation plan for all of the PLMR services.

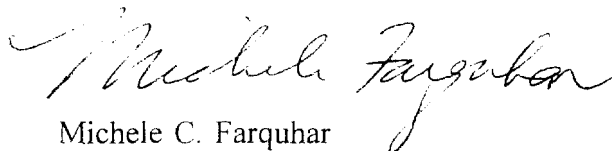
In the fall of 1995, four organizations active in the public safety arena filed a request -- similar to that of Mr. Boyce -- seeking a stay of consolidation of the Public Safety Radio Services pending Commission review of the Advisory Committee's recommendations. On November 20, 1995, the Wireless Telecommunications Bureau denied the stay request, stressing that its consolidation efforts would be adversely affected without consideration of the Public Safety Radio Services. (A copy of this *Order* is enclosed.) The Bureau also stated that the overall benefits of consolidation to the PLMR services should not be delayed, and that resolution of this matter would in fact assist the Advisory Committee in completing its work, particularly in view of the myriad of issues other than consolidation that the Advisory

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Committee was charged with addressing. Moreover, it was anticipated that the public safety community would participate fully in the consolidation planning process.

The Commission is now evaluating the record compiled in response to the consolidation proposals presented in PR Docket No. 92-235. We received a full range of comments from a variety of PLMR users, including members of the public safety community. In determining the new structure of the PLMR service pools, the Commission will consider the requirements of the public safety community, including those involved with forestry-conservation. To ensure that Mr. Boyce's views receive full consideration, his correspondence, along with a copy of this response, will be placed in the record of PR Docket No. 92-235.

Sincerely,

A handwritten signature in cursive script, reading "Michele Farquhar".

Michele C. Farquhar
Acting Chief, Wireless Telecommunications Bureau

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DA 95-2354

In the Matter of)	
)	PR Docket No. 92-235
Replacement of Part 90 by Part 88 to)	
Revise the Private Land Mobile Radio)	
Services and Modify the Policies)	
Governing Them)	

Order

Adopted: November 20, 1995

Released: November 20, 1995

By the Deputy Chief, Wireless Telecommunications Bureau:

1. Introduction. On June 15, 1995, the Commission adopted a Report and Order¹ that, among other matters, mandated consolidation of the Part 90 Private Land Mobile Radio (PLMR) services, including the Public Safety Radio Services.² The Public Safety Communications Council (PSCC)³, the Association of Public-Safety Communications Officials-International, Inc. (APCO), the International Municipal Signal Association (IMSA), and the International Association of Fire Chiefs (IAFC) request that the Commission stay consolidation of the Part 90 Public Safety Radio Services until such time as the charter of the Public Safety Wireless Advisory Committee (Advisory Committee) has expired and the Commission has had the opportunity to review and consider the recommendations of the Advisory Committee.⁴ For the reasons stated below, we deny the requests for stay.

2. Background. The Report and Order established technical rules and guidelines aimed at improving the efficiency of the PLMR spectrum and facilitating the introduction of advanced technologies into the private mobile services. In addition to the technical rules

¹ Report and Order, PR Docket No. 92-235, FCC 95-255, 60 Fed Reg. 37152 (1995).

² The Part 90 Public Safety Radio Services (Subpart B) include the Fire, Emergency Medical, Forestry-Conservation, Highway Maintenance, Local Government and Police Radio Services, 47 C.F.R. Subpart B.

³ We note that the Executive Committee members of the Council include the Association of Public-Safety Communications Officials-International, Inc. and the International Municipal Signal Association/International Association of Fire Chiefs. PSCC also seeks a stay with respect to the Subpart C Special Emergency Radio Service.

⁴ Parties emphasize that this request for stay does not relate to non-public safety radio services.

Safety Radio Services before the Advisory Committee has completed its work.⁸ According to PSCC "[i]t would be needlessly expensive and burdensome on all involved, including the Commission, for the Public Safety services to implement changes ... and then have to make significant changes again at the conclusion of the [Advisory Committee's] studies and recommendations."⁹ IMSA and IAFC further contend that they are entitled to a stay under the four-prong test¹⁰ set forth in Washington Metropolitan Transit Commission v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977)(Holiday Tours).¹¹ We will address each applicable "prong" below.¹²

5. Irreparable Harm. First, IMSA/IAFC contend that failure to allow the Advisory Committee to do its job and provide crucial information which would determine the best way to consolidate existing stations could cause irreparable harm to new applicants as well as existing licensees. They argue that a stay will allow the Commission sufficient time to ensure that policies developed for the Public Safety Radio Services maximize interoperability, efficiency and enhancement of public safety telecommunications and minimize chances for interference or mismanagement of these important services.¹³

6. A stay is an extraordinary remedy which the Commission grants upon request in limited circumstances. Based on the factors presented by the above parties, we conclude that Petitioners do not meet the standards required for grant of a stay. Specifically, we find that Petitioners have failed to make the required showing of irreparable harm. To show irreparable harm, "the injury must be both certain and great; it must be actual and not

⁸ See, for example, APCO petition at 2, PSCC petition at 4, and IMSA/IAFC petition at 2.

⁹ Public Safety Communication Council comments at 5.

¹⁰ Under this test, a party moving for a stay must show: (1) a strong likelihood of prevailing on the merits; (2) irreparable harm; (3) issuance of a stay will not harm others; and (4) that granting a stay will serve the public interest. IMSA/IAFC note, however, that its pleading addresses only three prongs of the test as there is no underlying litigation and no issue with respect to prevailing on the merits.

¹¹ See also Virginia Petroleum Jobbers Ass'n v. Federal Power Commission, 259 F.2d 921, 925 (D.C. Cir. 1958).

¹² We do not herein address "likelihood of prevailing on the merits." This prong is inapposite because these petitions are not filed in conjunction with a contested cause of action between opposing parties.

¹³ IMSA/IAFC comments at 6.

the proposals and comments of industry of how best to accomplish the consolidation of services. Significant potential for harm to others in the PLMR community will accrue if we were to impose a stay in the consolidation of the Public Safety Radio Services. In the Report and Order, the Commission noted that it sought a consensus from all users in the PLMR community in developing a consolidation plan. The Commission recognized that this action represented a significant change for all PLMR services. The Commission viewed consolidation as a unified effort by the PLMR community to maximize the effective and efficient operations of the private services. The Report and Order emphasized the importance of developing a consolidation plan for all of the PLMR services. A specific comprehensive consolidation plan must include clear guidelines for the structure of the Public Safety Radio Services. Should the public safety community not participate in discussions to develop a consensus for consolidating the radio services, the PLMR community efforts to achieve more efficient and flexible spectrum use could be unnecessarily delayed and detrimentally affected. In short, removing a specific class of land mobile services from the consolidation planning process would significantly and adversely affect the entire "Refarming" initiative.

10. Public Interest. Third, IMSA/IAFC argue that it is in the public interest to use the Advisory Committee to its maximum potential, and not to risk conflicting directives from the Advisory Committee and the rule making proceeding concerning the consolidation of the Public Safety Radio Services.¹⁷ Moreover, these parties state that the delay resulting from this request will be minimal. Again, the Commission is not at a point where it risks even a potential conflict with a recommendation of the Advisory Committee. The Commission is committed to a process that provides the Advisory Committee an opportunity to examine the range of issues facing public safety communications. Our pervading interest is that proposals and comments on the consolidation of services be submitted so that the Commission can continue its efforts in implementing the Refarming initiative, which includes the benefit of any Advisory Committee recommendation addressing the consolidation of services. A stay would likely delay these efforts and be contrary to the public interest.

11. Conclusion. For these reasons, and pursuant to Section 1.43 of the Commission's Rules, the Requests for Stay filed by the Association of Public-Safety Communications Officials-International, Inc., the International Municipal Signal Association and the International Association of Fire Chiefs, and the Public Safety Communications Council ARE DENIED.

¹⁷ IMSA/IAFC comments at 8.

RICHARD SHELBY
ALABAMA

COMMITTEE ON APPROPRIATIONS
COMMITTEE ON BANKING, HOUSING,
AND URBAN AFFAIRS
SELECT COMMITTEE ON INTELLIGENCE

○ 110 HART BUILDING
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(202) 224-5744

United States Senate
WASHINGTON, DC 20510-0103

February 5, 1996

Director
Office of Legislative Affairs
Federal Communications Commission
Room 808
1919 M Street, N.W.
Washington, DC 20554

Dear Director:

Enclosed please find a copy of correspondence I received from Timothy Boyce.

Please reply, **in duplicate**, to my aide, KIM STEIN.

Sincerely,

Richard Shelby

Richard Shelby

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Enclosure

To	From
Co.	Co.
Dept.	Phone # 96 FEB -2 PM 2:22
Fax # 202-224-3446	Fax #

Making Alaba

Alabama Forestry Commission
PO Box 302550 Montgomery, AL 36130-2550

February 2, 1996

The Honorable Richard C. Shelby
United States Senate
Washington, DC 20510

Dear Senator Shelby:

This is to request your urgent attention to and help on an issue that has potential impact on public safety through the efficient and effective coordination of public radio frequencies.

Our agency is an emergency responder for forest fire suppression and also often very involved in responding to other natural disasters. We depend on forestry conservation radio communications systems that are well designed, interference free, available and coordinated in our mission of protection life and property. The majority of forestry conservation radio systems are inter-tied with local police and fire radio systems providing for maximum efficiency during emergencies.

The Federal Communications Commission (FCC) is actively seeking to combine existing frequency coordinating groups (20) into two to four generalized frequency coordinating pools of which only one will be devoted to public safety. They are also seeking to remove forestry conservation activities from the definition of public safety and place it into a public service pool of unrelated or non-governmental services. Both of these actions will have serious impacts on state government and its ability to deliver needed public safety services.

I am asking you to contact the FCC immediately and ask that they postpone forced consolidation until the FCC's Public Safety Wireless Advisory Committee (PSWAC) completes its studies as mandated by congress and retain forestry conservation activities within the definition of Public Safety. Consolidation at this point is premature and would likely create serious radio interference problems. The PSWAC findings may recommend consolidation; for the FCC to force the issue before the findings would greatly complicate this issue.

The existing frequency coordination system through the Forestry Conservation Communications Association (FCCA), has worked well for 30 years, and is supported by the Public Safety Communications Council ("PSCC"). The FCCA has been very effective in solving interference problems at the coordinator level. Interservice sharing problems have largely been solved in the PSCC.

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Senator Shelby
February 2, 1996
Page two

The attached issue paper describes this issue in greater detail and is provided for your information and use. Please contact me if you need additional information or have questions. Thank you for your attention to this issue.

Sincerely,



Timothy C. Boyce
State Forester

TCB:JCK/lr

attachment

SF-1

NATIONAL ASSOCIATION OF STATE FORESTERS

444 North Capitol Street, NW Suite 540 Washington, D.C. 20001 202/624-5415

FEDERAL COMMUNICATIONS COMMISSION (FCC) RELEASE OF PR DOCKET 92-235 AND NOTICE OF FURTHER PROPOSED RULE MAKING

ISSUE

The Federal Communications Commission's (FCC) release of PR Docket 92-235 seeks to:

- (1) Combine the existing (20) frequency coordinating groups of the Private Land Mobile Radio Service into 2 to 4 generalized frequency coordinating pools, with only one being Public Safety.
- (2) Remove Forestry Conservation activities from the definition of public safety and place it into a Public Service pool of unrelated Government and Non-Government Services. This action will have serious adverse impacts on state government and its ability to deliver needed public safety services.

BACKGROUND

Through release of PR Docket 92-235, the FCC has completed the reorganization of the private land mobile radio frequencies. In addition, the FCC now proposes to:

- (1) consolidate all members of the Public Safety community into one large common pool of frequencies that would be shared equally by all users. Current criteria for eligibility and operational requirements would be lost and channels would be assigned on a first come, first serve basis; or
- (2) form two (2) public pools:
 - a. Emergency Response--would be made up of Police, Fire, Emergency Medical, and special Emergency services; and
 - b. Public Service--would be comprised of Forestry Conservation, Highway Maintenance, Local Government, Petroleum Industry, Power, and Railroad services.

This plan would remove Forestry Conservation activities from the definition of Public Safety and is totally unacceptable to the Forestry Conservation Communications Association (FCCA) and the National Association of State Foresters (NASF).

The Forestry Conservation Communications Association represents state forestry, fish and wildlife, and other similar agencies. Collectively, these agencies provide emergency wildland fire control and enforce forest, fish, and game regulations. Additionally, State Foresters provide significant

support in wildland fire control to the USFS, BLM, BIA, and USFWS. They also have primary responsibility for fire control on three-fourths of this nation's forest land. In carrying out these responsibilities, State Foresters must frequently communicate with the State's Office of Emergency Management, State Fire Marshal, State Police, and local police and fire departments as an essential part of accomplishing their mission. Thus, it is extremely important operationally that Forestry Conservation activities remain part of the Public Safety pool.

If the FCC is successful, these initiatives will:

- Create serious interference problems impacting public safety responses affecting life, limb, and property.
- Negate future implementation of high speed data and image applications by random assignment of forestry conservation channels, within existing channel spacing, for non-forestry conservation use.
- Diminish protection for wide area networks and logical systems planning among forest conservation agencies that use a single interested frequency coordinator.
- Create interoperability problems and frequency coordination issues among Forestry and other Public Safety Services.
- Award frequency channels on a first come, first served basis to private and public services such as railroads, utility companies, and various governmental entities without public safety priorities.

RECOMMENDED ACTION

Please contact members of the FCC (Attachment 1) and ask them to:

- Postpone forced consolidation until the FCC's Public Safety Wireless Advisory Committee (PSWAC) completes its studies as mandated by Congress.
- Retain Forestry Conservation activities within the definition of Public Safety.

TIME FRAMES

FCC Consolidation of frequency coordination pools completed by March 1, 1996.

PSWAC draft findings are due to FCC by June 1996 with final document due September 1996.

Attachment I

**Federal Communication Commission
1919 M Street, NW
Washington, D.C. 20554**

Commissioners:

Reed Hundt	Chairman
Andrew C. Barrett	Commissioner
Rachelle B. Chong	Commissioner
Susan Ness	Commissioner
James H. Quello	Commissioner